

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

NATHANIEL T. WILLIAMS v. CHERRY LINDAMOOD, Warden

**Appeal from the Circuit Court for Wayne County
No. 13988 Robert Jones, Judge**

No. M2006-01530-CCA-R3-HC - Filed November 21, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the habeas court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The Petitioner has appealed the habeas court's order dismissing the petition for writ of habeas corpus. Upon a review of the record in this case, we are persuaded that the habeas court was correct in dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the habeas corpus court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rule of the Court of Criminal Appeals**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Nathaniel T. Williams, Clifton, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Pam Anderson, Assistant District Attorney General; for the Appellee, State of Tennessee.

MEMORANDUM OPINION

The Petitioner is currently incarcerated serving a sentence of twenty-six years as a standard offender after being convicted of possession of a handgun after a felony conviction and second degree murder. The Petitioner has submitted this petition for a writ of habeas corpus claiming his indictment was defective, and, as a result, he could not be convicted of second degree murder, and that the trial court did not have jurisdiction to enter the judgment. At the habeas court, the State

argued the Petitioner did not establish either a void judgment or an expired sentence. Finding the State's motion well taken, the trial court summarily denied the petition.

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998) (citing State ex rel. Newsom v. Henderson, 424 S.W.2d 186, 189 (Tenn. 1968)). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. See Ussery v. Avery, 432 S.W.2d 656 (Tenn. 1968); State ex rel. Wade v. Norvell, 443 S.W.2d 839 (Tenn. Crim. App. 1969). The burden is on the Petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 381 S.W.2d 290, 291-91 (Tenn. 1964). A “habeas corpus petition may be dismissed without a hearing, and without the appointment of counsel for a hearing” if the petition does not allege facts showing the Petitioner is entitled to relief. State ex rel. Edmondson v. Henderson, 421 S.W.2d 635, 636 (Tenn. 1967) (citing State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964)).

The indictment the Petitioner alleges is defective states the following, “Nathaniel T. Williams . . . intentionally, and with premeditation did kill Joseph Christopher Cox, in violation of Tennessee Code Annotated § 39-13-202, and against the peace and dignity of the State of Tennessee.” The Petitioner claims that because the indictment does not allege he committed second degree murder, he cannot be convicted of that crime.

If an indictment is so defective “as to deprive the court of jurisdiction,” the issue can be raised in a petition for habeas corpus relief. Dykes v. Compton, 978 S.W.2d 528, 528 (Tenn. 1998); accord Wyatt v. State, 24 S.W.3d 319, 323 (Tenn. 2000). This indictment is in no way defective. It is well settled that “an indictment for an offense encompasses, by implication, all lesser included offenses.” Strader v. State, 362 S.W.2d 224, 228 (Tenn. 1962). Second degree murder is a lesser included offense of first degree murder. See State v. Burns, 6 S.W.3d 453 (Tenn. 1999). Because the indictment properly alleged first degree murder, the trial court had jurisdiction over the subject matter and person of the Petitioner. The jury could validly convict the Petitioner of second degree murder. The Petitioner is not entitled to relief on this issue.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the Petitioner has not established that he is entitled to habeas corpus relief based on a void judgment. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance to Rule 20, Rule of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE